

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 East 42<sup>nd</sup> St. Suite 4510  
New York, New York 10165  
cerrington@faillacelaw.com

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

June 24, 2021

**VIA FIRST CLASS MAIL**

Honorable Brian Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza E.  
Brooklyn, NY 11201

Re: Zepeda Ochoa v. Famous Pizza of Jackson Heights Corp. et al., 21-cv-1604

Your Honor,

This firm represents Plaintiff in the above-captioned case. We write jointly with counsel for Defendants pursuant to this Court's order of March 26, 2021 and in anticipation of the Initial Conference currently set for July 1, 2021.

**Legal basis for claims**

This is a wage and hour case brought on behalf of a former pizza maker and delivery worker who was employed at the Defendants' Queens pizza restaurant, alleging violations of the Fair Labor Standards Act and the New York Labor Law. The Defendants paid the Plaintiff a fixed weekly salary, in violation of the Hospitality Wage Order. This fixed weekly salary and the Plaintiff's hours were such that his effectively hourly wage fell below not only the applicable New York State minimum wage, but also below the lower, federal minimum wage. Plaintiff contends that the Defendants did not have the right to take a tip credit. However, even if they had, his effective hourly rate fell below even the tipped minimum wage.

**Defenses**

Defendants respectfully believe that the allegations in the Complaint, including Plaintiff's work hours, and rates of pay are exaggerated, and can be refuted by Defendants' documentary evidence and eye-witness testimony.

In an effort to conserve resources ahead of discovery, the parties respectfully request that the case be referred to a Magistrate Judge for purposes of a Settlement Conference. The parties further respectfully request that the discovery deadlines set forth in the Rule 26(f) Meeting Report be stayed, *sine die*, pending the resolution of the Settlement Conference.

The parties intend to exchange in informal discovery ahead of the Settlement Conference, to facilitate a more meaningful conversation.

Page 2

**Jurisdiction**

This Court has subject matter jurisdiction under the Fair Labor Standards Act. Venue is proper in the Eastern District because the actions giving rise to it occurred in Queens County.

**Contemplated Motions**

No motions or requests to file such are currently outstanding. The Plaintiffs do not contemplate filing any motions at this time.

We thank the court for its time and attention to this case.

Respectfully submitted,

---

Clela A. Errington, Esq.  
Michael Faillace & Associates, P.C.  
Counsel for Plaintiffs

Cc: All counsel via ECF